



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 29, 2022

IN THE MATTER OF:

Appeal Board No. 625649

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the determination denying the claimant the use of alternate base period wages to increase his benefit rate because the claimant did not file his application for use of those wages within 10 days of the mail date of the monetary determination. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed September 14, 2022 (), the Administrative Law Judge overruled the determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and evidence should be taken regarding the date when the Department of Labor received the claimant's Request for Alternate Base Period. At the remand hearing, the Commissioner of Labor should be represented and should produce the document received from the claimant along with a witness to testify regarding the date the Request for Alternate Base Period was received by the Department of Labor. In addition, the claimant shall be questioned regarding the date when he submitted his Request for Alternate Base Period, and the method by which he submitted it (such as by mail, fax, or secure message). The Judge shall take such other testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of the timeliness of the claimant's request for use of alternate base period wages, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue of the timeliness of the claimant's request for use of alternate base period wages, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER